

EXHIBIT 1

FIELD NOTES TRACT 1

Being 0.708 acre out of the H. C. Gainer Survey (previously known as the Tyler Top Railway Company Survey Section 40) in Travis County, Texas, called 0.732 acre, Tract 2, in Document No. 2002231597, Official Public Records, Travis County, Texas, save and except that tract called 0.0317 acre in a deed recorded in Volume 7122, Page 143, Deed Records, Travis County, Texas, (hearings related hereto are based on the deed recorded in Volume 11214, Page 672, Real Property Records, Travis County, Texas) as shown on accompanying survey plat and being more particularly described as follows:

Commencing in reference to a 1/2" iron pin found at an angle point in the south line of Sanna Hills, Section 1-B, a subdivision recorded in Volume 100, Page 80, Plat Records, Travis County, Texas, at the northeast corner of Sanna Hills, Section 1-A, a subdivision recorded in Volume 93, Page 239, Plat Records, Travis County, Texas, the northwest corner of a tract called 0.50 acre, Tract 1, in a deed recorded in Document No. 2002231597, Official Public Records, Travis County, Texas, from said point, a 1/2" iron pin found bears N 75°37'05" W, 76.34'.

THENCE, with the south line of said Sanna Hills, Section 1-B and the north line of said Tract 1, S 60°56'00" E, said curve constitutes directional control for this survey, 200.09', to a 1/2" iron pin found with cap stamped "F.A. INC 2988", in the west line of a tract called 1403.198 acres in a deed to Leaf Lee Ranch, Ltd., recorded in Document No. 2000119521, Official Public Records, Travis County, Texas, at the southeast corner of said Sanna Hills, Section 1-B and the northeast corner of said Tract 1.

THENCE, with the west line of said Leaf Lee Ranch tract and the east line of said Tract 1, S 29°04'00" W, 97.50', to a 1/2" iron pin set with cap stamped "ARPENTEUR RPLS 4772", at the southeast corner of said Tract 1, for the northeast corner of said Tract 2 and the PLACE OF BEGINNING of this tract.

THENCE, continuing with the west line of said Leaf Lee Ranch tract, the east line of said Tract 2, and the east line of this tract, S 30°38'10" W, 141.01', to a mag nail set with aluminum washer stamped "ARPENTEUR RPLS 4772", in the curved north line of Bee Caves Road (P.M. 2244) (R.O.W. varies), at the northeast corner of said save and except tract, for the southeast corner of this tract, from said point, a concrete R.O.W. monument found at the end of said curve having a radius of 5644.58', a chord with bears N 68°05'30" E, 436.47'.

THENCE, with the curved north line of Bee Caves Road, the north line of said save and except tract, and the south line of this tract, with said curve having a radius of 5644.58', a chord which bears S 70°45'40" W, 168.57', an arc distance of 168.57', to a mag nail set with aluminum washer stamped "ARPENTEUR RPLS 4772", at the end of said curve.

THENCE, continuing with the north line of Bee Caves Road, the north line of said save and except tract, and the south line of this tract, S 71°55'01" W, 19.06', to a 1/2" iron pin set with cap stamped "ARPENTEUR RPLS 4772", at the southeast corner of said Sanna Hills, Section 1-A, for the southwest corner of this tract.

THENCE, with the east line of said subdivision, the west line of said Tract 2, and the west line of this tract, N 18°25'00" E, 250.30', to a point at the southwest corner of said Tract 1, the northeast corner of said Tract 2, for the northwest corner of this tract.

THENCE, with the south line of said Tract 1 and the north line of this tract, S 72°10'04" E, 178.63', to the PLACE OF BEGINNING, and containing 0.708 acre of land, more or less.

Prepared from a survey made on the ground September 22, 2005, by:
Arpenteur Professional Surveying
8906 Wall Street, Suite 302
Austin, Texas 78754
(512) 832-1212
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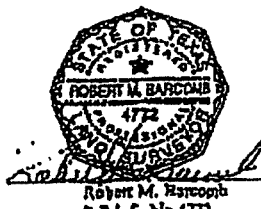


EXHIBIT 2

State of Texas §
 § **Declaration of Covenants and Restrictions**
County of Travis §

This **Declaration of Covenants and Restrictions** (this "Declaration") is executed to be effective as of _____, 2008, by **10324, Inc.**, a Texas corporation ("Owner"), for the benefit of the **Senna Hills Municipal Utility District**, a Texas municipal utility district (the "District").

Recitals

1. Owner is the owner of the following two contiguous pieces of real property located in Travis County, Texas:

Tract 1 – being 0.50 acres out of the John G. Mustain Survey 40, Abstract No. 2623, Travis County, Texas, and being more particularly described by metes and bounds in **Exhibit A** attached hereto and made a part hereof.

Tract 2 – being 0.708 acres out of the E.C. Gaines Survey (previously know as the Tap Railway Company Survey Section 40), Travis County, Texas, and being more particularly described by metes and bounds in **Exhibit B** attached hereto and made a part hereof.

Tract 1 and Tract 2 are hereafter collectively referred to as the "Property."

2. The District is a duly organized municipal utility district and body politic which provides potable water and wastewater service to properties within the District.

3. Owner and the District have now agreed to define and limit the scope of permissible activities on the Property through the covenants, conditions, and restrictions set forth herein.

Declaration

THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:

Declarant does hereby declare and impose upon the Property the following covenants, conditions, and restrictions. The covenants, conditions, and restrictions of this Declaration shall apply to and become a part of all legal instruments whereby title to or possession of the Property is hereafter conveyed or transferred, such covenants, conditions, easements, restrictions, and limitations to run with the land and to be binding upon and inure to the benefit of all parties, now or hereafter, owning or using the Property or any portion thereof, their heirs, executors, administrators, successors, and assigns.

1. **Subdivision of the Property.** Owner agrees that it will own, hold, operate, and convey Tract 1 and Tract 2 as a single parcel of land, and that it will not attempt to divide or subdivide the Property in any form or fashion. This provision shall not prevent Owner or Owner's successors and assigns from attempting to plat the Property as a single legal lot, should it choose to do so.

2. **Permitted Uses.** Owner agrees that the future use and enjoyment of the Property shall be strictly limited to the following "Permitted Uses":

- a. ADMINISTRATIVE AND BUSINESS OFFICES, being the use of a structure on the Property for business offices engaged in the provision of executive, management, or administrative services (for example: real estate, insurance, property management, investment, personnel, travel, and secretarial services).
- b. ART GALLERY, being the use of a structure on the Property for the display or sale of works of art.
- c. BED AND BREAKFAST RESIDENTIAL, being the use of a residential structure or structures on the Property to provide rooms and meals for temporary lodging for overnight guests on a paying basis.
- d. MULTIPLE DWELLING RESIDENTIAL, being the use of the Property for multiple dwelling units, other than a mobile home or manufactured home, under common ownership.
- e. PROFESSIONAL OFFICE, being the use of a structure on the Property for the provision of professional or consulting services in the fields of law, architecture, design, engineering, accounting, or similar professions.
- f. RETAIL, being the use of a structure on the Property for the sale or rental of goods for personal or household uses; provided such use shall not include the operation of a convenience store, drug store, grocery store, liquor store or service station.

Any use of the Property, or any portion thereof, for any purpose outside of the foregoing Permitted Uses is strictly prohibited.

3. **Improvements.** All improvements constructed on the Property shall be built in place. No preconstructed, prefabricated, or existing building or structure may be moved onto any portion of the Property.

4. **Repair of Buildings.** All improvements upon any portion of the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained.

5. **Manufacturing and Hazardous Activities.** No industrial applications or activities of any type, such as manufacturing, fabrication, refining, distilling, or assembly, shall be conducted on the Property at any time. In addition, no activities shall be conducted on the Property, and no improvements shall be constructed on the Property, which are or might be unsafe or hazardous to any person or property or which generate excessive noise or odor. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, no open fires shall be lighted or permitted except within safe and well-designed fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

6. **Noise.** No exterior loudspeakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes or ordinary residential stereo speakers) shall be located, used or placed on any of the Property. No nuisance shall be permitted to exist or operate upon any portion of the Property and no unnatural noise which would be reasonably offensive or detrimental to any of the residents of the District shall be permitted.

7. **Rubbish and Debris.** No rubbish or debris or any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view.

8. **Tanks.** All above ground tanks shall be screened so as not to be visible from outside of the Property.

9. **Temporary Structures.** No tent, shack, mobile home, trailer, or other temporary building, improvement, or structure shall be placed upon the Property; provided, however, that temporary structures necessary for the storage of tools and equipment may be placed upon the Property during actual construction of improvements on the Property.

10. **Unsightly Articles; Vehicles.** No unsightly articles shall be permitted to remain on the Property so as to be visible from adjoining property or public or private thoroughfares; Without limiting the generality of the foregoing, trailers, graders, trucks larger than three-quarter ton, boats, tractors, campers, wagons, buses, and garden maintenance equipment shall at all times, except when in actual use, be kept in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, drying, or airing clothing or household fabrics shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clippings, metal, bulk materials or scrap, refuse or trash shall be kept, stored or allowed

to accumulate on any portion of the Property, except within enclosed structures or otherwise appropriately screened from view.

11. **Mobile Homes, Travel Trailers and Recreational Vehicles.** No mobile homes or manufactured homes shall be parked or placed on the Property at any time, and no travel trailers or recreational vehicles shall be parked on or near the Property so as to be visible from adjoining property or public or private thoroughfares for more than forty-eight (48) hours.

12. **Construction Activities.** Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements upon the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area.

13. **Enforcement.** The District, and any successor to the rights, titles, and interests of the District, shall have the right to enforce the provisions of this Declaration. Such rights of enforcement shall include injunctive relief against, the breach of any such provision.

14. **Amendment and Variances:** No variance from the provisions of this Declaration may be granted, nor may any modification or amendment to this Declaration be made, without the prior written approval of the District's Board of Directors.

15. **Nonwaiver.** The failure on the part of the District to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

16. **Governing Law.** This Declaration shall be construed and governed under the laws of the State of Texas.

17. **Duration:** These covenants, conditions, and restrictions shall run with the land and shall be binding upon and against the Property for a period of fifty (50) years from the date of recordation, after which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the then current owner of the Property and the District, or any successor to the rights, titles, and interests of the District, has been recorded agreeing to release said covenants, conditions, and restrictions in whole or in part.

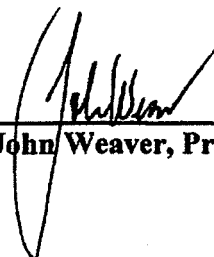
18. **Declaration Severable.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision of portion thereof.

19. **Singular Includes Plural.** Unless the context required a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

20. **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the sections hereof.

Executed to be effective as of the date first written above.

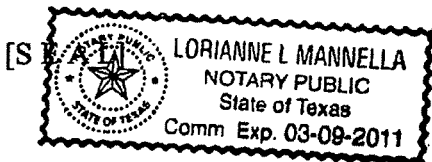
10324, Inc., a Texas corporation

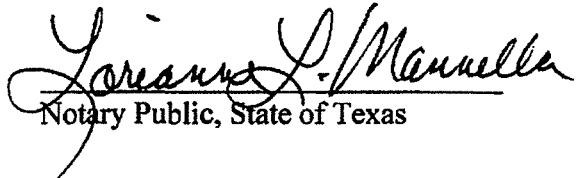
By: 

John Weaver, President

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was ACKNOWLEDGED before me, on May 1
_____, 2008, by John Weaver, President of 10324, Inc., a Texas corporation, on behalf
of said corporation.





Notary Public, State of Texas

When recorded return to:

Steven M. Bowers
Attorney at Law
PO Box 5035
Austin TX 78763

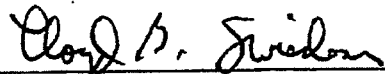
Lienholder Consent and Subordination

This **Lienholder Consent and Subordination** (this "Consent") is attached to and made a part of that certain Declaration of Covenants and Restrictions (the "Declaration") executed by 10324, Inc., a Texas corporation, as "Owner," for the benefit of the Senna Hills Municipal Utility District, a Texas municipal utility district (the "District") covering certain real property and appurtenances which are more particularly described in the Declaration (the "Property").

The undersigned is the sole holder (the "Holder") of certain liens and security interests (collectively, the "Liens") against the Property, which liens are evidenced by that certain Deed of Trust recorded under Document No. 2007137067 of the Official Public Records of Travis County, Texas, and by that certain Deed of Trust recorded under Document No. 2007065903 of the Official Public Records of Travis County, Texas.

Holder hereby consents to the execution and recordation of the Declaration and hereby subordinates the Liens to the covenants, conditions, restrictions, and encumbrances created upon the property by the Declaration, in all respects and for all purposes.

SIGNED

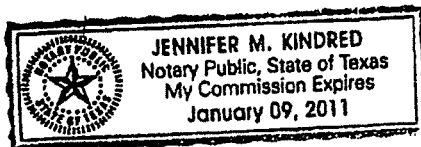



Dr. Lloyd Swiedom

STATE OF TEXAS §
 §
COUNTY OF Harris §

This instrument was ACKNOWLEDGED before me on July 31, 2008
by Dr. Lloyd Swiedom.

[S E A L]





Notary Public, State of Texas

Exhibit "A"

FIELD NOTES TRACT 1

Being 0.500 acre out of the John G. Mustain Survey No. 40, Abstract No. 2636, in Travis County, Texas, the same tract described as Tract 1 in Document No. 2002231597, Official Public Records, Travis County, Texas. (bearings recited herein are based on the deed recorded in Volume 11214, Page 672, Real Property Records, Travis County, Texas) as shown on accompanying survey plat and being more particularly described as follows:

BEGINNING at a 1/4" iron pin found at an angle point in the south line of Senna Hills, Section 1-B, a subdivision recorded in Volume 100, Page 80, Plat Records, Travis County, Texas, at the northeast corner of Senna Hills, Section 1-A, a subdivision recorded in Volume 93, Page 239, Plat Records, Travis County, Texas, the northwest corner of said Tract 1, for the northwest corner of this tract, from said point, a 1/4" iron pin found bears, N 75°39'05" W, 76.34'.

THENCE, with the south line of said Senna Hills, Section 1-B, the north line of said Tract 1, and the north line of this tract, S 60°56'00" E, said course constitutes directional control for this survey, 200.09', to a 1/4" iron pin found with cap stamped "CA INC 2988", in the west line of a tract called 1403.19K acres in a deed to Leaf Lee Ranch, Ltd., recorded in Document No. 2000119521, Official Public Records, Travis County, Texas, at the southeast corner of said Senna Hills, Section 1-B, at the northeast corner of said Tract 1, for the northeast corner of this tract.

THENCE, with the west line of said Leaf Lee Ranch tract, the east line of said Tract 1, and the east line of this tract, S 29°04'00" W, 97.50', to a 1/4" iron pin set with cap stamped "ARPENTRIER RPI S 4772", at the southeast corner of said Tract 1, for the southeast corner of this tract.

THENCE, with the south line of said Tract 1 and the south line of this tract, N 72°10'04" W, 178.63', to a point in the east line of said Senna Hills, Section 1-A, at the southwest corner of said Tract 1, for the southwest corner of this tract.

THENCE, with the east line of said subdivision, the west line of said Tract 1, and the west line of this tract, N 18°25'00" E, 134.62', to the **PLACE OF BEGINNING**, and containing 0.500 acre of land, more or less.

Prepared from a survey made on the ground September 22, 2005, by:
Arpentier Professional Surveying
8906 Wall Street, Suite 302
Austin, Texas 78754
(512) 832-1212
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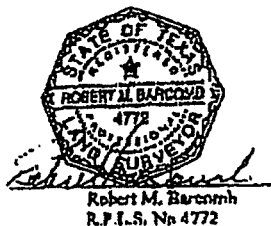


Exhibit "B"

FIELD NOTES TRACT 3

Being 0.708 acre out of the F. C. Gaines Survey (previously known as the Tyler Loop Railway Company Survey Section 40) in Travis County, Texas, called 0.732 acre, Tract 2, in Document No. 2002231597, Official Public Records, Travis County, Texas, save and except that tract called 0.0337 acre in a deed recorded in Volume 7322, Page 148, Deed Records, Travis County, Texas, (hearings related herein are based on the deed recorded in Volume 11214, Page 672, Real Property Records, Travis County, Texas) as shown on accompanying survey plat and being more particularly described as follows:

Commencing in reference at a 1/2" iron pin found at an angle point in the south line of Senna Hills, Section 1-B, a subdivision recorded in Volume 100, Page 80, Plat Records, Travis County, Texas, at the northeast corner of Senna Hills, Section 1-A, a subdivision recorded in Volume 93, Page 239, Plat Records, Travis County, Texas, the northwest corner of a tract called 0.50 acre, Tract 1, in a deed recorded in Document No. 2002231597, Official Public Records, Travis County, Texas, from said point, a 1/2" iron pin found bears N 75°39'05" W, 76.34'.

THENCE, with the south line of said Senna Hills, Section 1-B and the north line of said Tract 1, S 60°56'00" E, said course constitutes directional control for this survey, 200.09', to a 1/2" iron pin found with cap stamped "C.A. INC 2988", in the west line of a tract called 1403.198 acres in a deed to Leaf Lee Ranch, Ltd., recorded in Document No. 2000119521, Official Public Records, Travis County, Texas, at the southeast corner of said Senna Hills, Section 1-B and the northeast corner of said Tract 1.

THENCE, with the west line of said Leaf Lee Ranch tract and the east line of said Tract 1, S 29°04'00" W, 97.50', to a 1/2" iron pin set with cap stamped "ARPENTEURS RPLS 4772", at the southeast corner of said Tract 1, for the northeast corner of said Tract 2 and the PLACE OF BEGINNING of this tract.

THENCE, continuing with the west line of said Leaf Lee Ranch tract, the east line of said Tract 2, and the east line of this tract, S 30°38'10" W, 141.01', to a mag nail set with aluminum washer stamped "ARPENTEURS RPLS 4772", in the curved north line of Bee Caves Road (P.M. 2244) (R.O.W. varies), at the northeast corner of said save and except tract, for the southeast corner of this tract, from said point, a concrete R.O.W. monument found at the end of said curve having a radius of 5644.58', a chord which bears N 68°05'30" E, 436.47'.

THENCE, with the curved north line of Bee Caves Road, the north line of said save and except tract, and the south line of this tract, with said curve having a radius of 5644.58', a chord which bears S 70°45'40" W, 168.57', an arc distance of 168.57', to a mag nail set with aluminum washer stamped "ARPENTEURS RPLS 4772", at the end of said curve.

THENCE, continuing with the north line of Bee Caves Road, the north line of said save and except tract, and the south line of this tract, S 71°55'01" W, 19.06', to a 1/2" iron pin set with cap stamped "ARPENTEURS RPLS 4772", at the southeast corner of said Senna Hills, Section 1-A, for the southwest corner of this tract.

THENCE, with the east line of said subdivision, the west line of said Tract 2, and the west line of this tract, N 18°25'00" E, 250.30', to a point at the southwest corner of said Tract 1, the northeast corner of said Tract 2, for the northwest corner of this tract.

THENCE, with the south line of said Tract 1 and the north line of this tract, S 72°10'04" E, 178.63', to the PLACE OF BEGINNING, and containing 0.708 acre of land, more or less.

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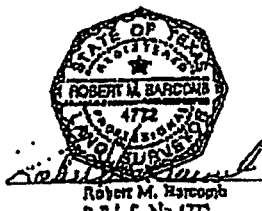


EXHIBIT 3

DECLARATION OF RESTRICTIVE COVENANTS REGARDING DEVELOPMENT OF PROPERTY

This Restrictive Covenant Regarding Development of Property (the "Declaration"), is executed on December ____, 2008, by 10324, Inc., ("Declarant"), for the benefit of the City of Austin, a municipal corporation (the "City), and is as follows:

GENERAL RECITALS:

- A. Declarant is the owner of two contiguous tracts of land, collectively referenced as the "Property" and described as follows:
- "Tract One" being 0.50 acres out of the John G. Mustain Survey 40, Abstract No. 2623, Travis County, Texas, more particularly described on "**EXHIBIT A**" attached hereto and incorporated for all purposes.
 - "Tract Two" being 0.708 acres out of the E.C. Gaines Survey (previously known as the Tap Railway Company Survey Section 40), Travis County, Texas, more particularly described on "**EXHIBIT B**" attached hereto and incorporated for all purposes.
- B. The term "Owner" means, individually, and the term "Owners" means, collectively, Declarant and all future owners of the fee interest of any portion of the Property (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.
- C. Declarant and the City of Austin are parties to a lawsuit, *Senna Hills Municipal Utility District and City of Austin, Texas v. O'Leary/Weaver, Inc. and 10324, Inc.*, Cause No. GN403171 in the 250th Judicial District Court of Travis County, Texas and have entered into a Rule 11 T.R.C.P. Agreement requiring a Restrictive Covenant be filed specifying the conditions placed on the Property. Declarant has agreed to impose upon the Property these covenants and conditions for the benefit of the Property and in settlement of disputes regarding the development regulations applicable to the Property.

NOW, THEREFORE, Declarant declares that the Property is subject to the following covenants, conditions and restrictions which run with the Property and bind all parties having right, title, or interest in or to such portion of the Property or any part, their respective heirs, successors, and assigns, and which inure to the benefit of each Owner. Each contract, deed or conveyance of any kind conveying those portions of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Declaration for all purposes.
2. Site Plan Requirements.
 - Declarant shall submit to the City a complete site plan application for the Property not later than May 15, 2009 and agrees to adhere to the City of Austin site plan process, diligently responding to all comments until a site plan is released for the Property by the City of Austin.
 - The City of Austin will assign a single point of contact to ensure that the site plan is reviewed under the terms of this Declaration.
 - Declarant shall submit water quality control designs for the Property with the site plan application, along with all calculations supporting a demonstration of reduction in pollutant load, to the satisfaction of the City.
 - Declarant shall post fiscal security to ensure the water quality controls are constructed and maintained properly as specified in City Code Section 25-8-234.
 - Declarant shall obtain and maintain an annual operating permit for the water quality controls on the Property as specified in City Code Section 25-8-233.
3. Water Quality. Declarant shall include in the site plan application water quality controls calculated to:
 - reduce pollutant load on the Property equal to the reduction that would be provided through an effective 40% downstream buffer, and
 - reduce pollutant load to offset the pollutant load attributable to the impervious cover added to the Property after August, 1992, including but not limited to rock walls and parking areas.
4. Unified Development Agreement. Declarant shall execute and record a Restrictive Covenant Regarding Unified Development, in a form acceptable to the City of Austin City Attorney, whereby Tract One and Tract Two are reviewed as a unified development/single site for the purposes of site plan review by the City and any proposed modifications to Tract One and/or Tract Two or any portion of either Tract shall be construed as a modification of the unified development.
5. Septic System. No septic system may be used on the Property after the Property has been included in the Senna Hills Municipal Utility District wastewater system.
6. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Declaration by Owners or the City entitles the Owners or City to cancel, rescind or otherwise terminate this Declaration, but such limitations do not affect in any manner any other rights or remedies which

the Owners or City may have hereunder by reason of any breach of this Declaration.

7. General Provisions.

- A. Inurement. This Declaration and the restrictions created hereby inure to the benefit of and bind the Owners, and their respective successors and assigns. If an Owner conveys all or any portion of the Property, that former Owner will thereupon be released and discharged from any and all further obligations, if any, under this Declaration that it had in connection with the Property conveyed by it from and after the date of recording of such conveyance, but no such sale releases the former Declarant from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.
- B. Duration. Unless terminated in accordance with Paragraph 8(K) below, this Declaration remains in effect in perpetuity.
- C. Non-Merger. This Declaration will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
- D. Severability. The provisions of this Declaration are independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.
- E. Entire Agreement. This Declaration and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Declaration with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and the exhibits attached hereto. The provisions of this Declaration will be construed as a whole according to their common meaning and not strictly for or against any Owner.
- F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Declaration.
- G. Governing Law; Place of Performance. This Declaration and all rights and obligations created hereby will be governed by the laws of the State of Texas. This Declaration is performable only in the county in Texas where the Property is located.
- H. Notices. Any Notice to the Owners or the City must be in writing and given by delivering the same to such party in person, by expedited, private

carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Declaration will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

- I. Negation of Partnership. None of the terms or provisions of this Declaration will be deemed to create a partnership between or among the Declarant, any Owner, or the City of Austin in their respective businesses or otherwise; nor will it cause them to be considered joint ventures or members of any joint enterprise.
- J. Enforcement. If any person, persons, corporation, or entity of any other character violates or attempts to violate this Declaration, it will be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law, or in equity, against said person, or entity violating or attempting to violate the Declaration and to prevent said person or entity from violating or attempting to violate the Declaration. The failure at any time to enforce this Declaration by the City of Austin, its successors and assigns, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so. The failure of the City of Austin to comply with its responsibilities under this Declaration shall constitute a defense against an enforcement action under this Section.
- K. Modification and Amendment. This Declaration may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Records of Travis County, Texas, executed, acknowledged and approved by (a) a majority vote of the City Council of the City of Austin; and (b) the Owners of the Property.

Executed to be effective this _____ day of December, 2008.

DECLARANT:

10324, Inc., a Texas Corporation

By: _____
John Weaver, President

ACKNOWLEDGMENT

STATE OF _____ §

COUNTY OF _____ §

Before me _____, Notary Public, on this day personally appeared John Weaver, President of 10324, Inc. a Texas corporation, known to me to through _____ {in this blank either insert state and driver's license number or delete the word "through" and insert the word "personally" then **delete this instruction**) to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on _____, 2008.

Notary Public, State of _____

ACCEPTED:
CITY OF AUSTIN

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

AFTER RECORDING, RETURN TO:

City of Austin
Watershed Protection and Development Review Department
P.O. Box 1088
Austin, Texas 78767
Project Name: _____
Attn: Pat Murphy
Case No. _____

Instructions:

- (1) Using the forms below, attach either the Consent of Lienholder form if there is a lienholder, or the Affidavit of no Lien form.
- (2) Determine whether there is a lienholder by providing a lien search certificate from a Title Company that shows: all owners of record, all lienholders of record--with current liens, and a property description

LIENHOLDER CONSENT TO GRANT OF RESTRICTIVE COVENANTS

STATE OF TEXAS §
COUNTY OF TRAVIS §

Recitals:

Property owner's name(s) , is the Owner (called "Owner", whether one or more) of the following property:

That tract of land situated in _____ County, Texas described in the attached and incorporated **EXHIBIT "A"** ("Property").

Lienholder's name(s) ("Lienholder") holds a lien against the Property under the following described documents:

Deed of Trust dated **date**, from **Owner's full name** to **trustee's name**, Trustee, securing the payment of one promissory note of even date in the original principal amount of \$_____, payable to **Lienholder**, of record in Document Number _____, of the Official Public Records of Travis County, Texas.

Owner has granted to the City of Austin ("City") the right to enforce a Restrictive Covenant against and running with the Property.

Agreement

In consideration of \$10, and other good and valuable consideration, the receipt of which is acknowledged, the Lienholder agrees as follows:

1. Lienholder's full name consents to the grant of Restrictive Covenants against and running with the Property which are enforceable by the City and executed contemporaneously herewith.

2. Lienholder subordinates all of its liens on this Property to the rights and interests of the City, its successors and assigns, and any foreclosure of its liens will not extinguish City's rights, to enforce the Restrictive Covenants.

3. **Lienholder** affirms that the undersigned has the authority to bind the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.
Executed on _____, 20__.

Name of Bank
Type & state of bank

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF _____ §

COUNTY OF _____ §

Before me _____ (Notary name), Notary Public, on this day
personally appeared _____ (signer's name),
_____ (title) of
_____ (name of lienholder Ex: First
Federal Big Bank) a _____ [insert name of state of incorporation if entity,
insert National Association or State Association, if bank-ask which type], known to me to
through _____ "either insert state and driver's license
number or delete word through and insert personally" to be the person whose name is
subscribed to the foregoing instrument and acknowledged that [insert letter s in front word 'he' if
person signing is female] he executed the same for the purposes and consideration therein
expressed.

Given under my hand and seal of office this ____ day of _____, 20__.

Notary Public, State of _____

“Further Affiant sayeth not.”

_____ [name of company]

By: _____

Name: _____

Title: _____

State of Texas §

County of _____ §

SUBSCRIBED AND SWORN TO BEFORE ME on this ____ day of _____,
20__, to certify which witness my hand and official seal.

_____, Notary Public

State of Texas §

County of _____ §

On _____, 20__, before me, _____ [name of
notary], Notary Public, personally appeared _____ [name],
_____ [title] of _____ [name of company],
personally known to me to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized capacity, and that by his signature
on the instrument the person or the entity upon behalf of which the person acted, executed the
instrument.

WITNESS my hand and official seal

Notary Public, State of Texas